

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 567 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

M/S.CHANDRAKANT CO.

Versus

STATE OF GUJARAT

Appearance:

MR AD SHAH with MR BR PARIKH for Petitioners
MR SP DAVE, LD. APP for Respondent No. 1
MR MB PARIKH for MR MC SHAH for Respondent No. 2

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 31/03/98

ORAL JUDGEMENT

1. The petitioners have filed this Special Criminal Application for obtaining a writ of quo-warranto in relation to the appointment of respondent no.2 as the Food Inspector and to set aside his appointment as such as being in contravention of provisions of law and also

to quash and set aside the proceedings of Criminal Case No. 30 of 1984 pending in the Court of learned Chief Judicial Magistrate, District Kheda at Nadiad.

2. The facts of the case as set-out in the petition might briefly be stated : The petitioners, hereinafter referred to as 'the original accused nos. 1 to 10 respectively', have been prosecuted in the Court of the learned Chief Judicial Magistrate for the offence punishable u/S. 16(1)(a)(i) of the Prevention of Food Adulteration Act (for short 'the Act') in Food Adulteration Case No. 30 of 1984 (Criminal Case No. 30/84) at the complaint of respondent no.2.

3. It has been the case of the respondent no. 2, the complainant in the aforesaid criminal proceedings that he has been appointed as Food Inspector u/S. 9 of the Act, that he had gone to the premises of accused no. 1 at about 6.00 p.m. on 19/3/1984, during the course of dealings in cigarettes, Bidees, Katha, etc, that the accused no. 2 was present at the relevant point of time carrying on the business, that the complainant obtained a sample of 'Ful Tikadi Katha' and sent the same for its analysis and that the sample was found to be adulterated, not conforming to the standards. Consequently, the complainant, after obtaining consent from the local health authority, filed the aforesaid Criminal Case on 11/9/1984.

4. It has been the case of the petitioners also that accused no. 2 was present when the complainant visited the shop. Accused nos. 4 and 5 were not residing at Nadiad at all. Accused nos. 7 to 10 were also not in-charge of the business or any part thereof of accused no. 1 concern and only the accused nos. 2 and 6 would remain answerable if at all they are answerable in respect of the charge contained in the aforesaid Criminal Case.

5. So far as challenge against the appointment of complainant as a Food Inspector is concerned, it has been jointly submitted that the complainant has been removed as a Food Inspector.

6. Finally it has been submitted that accused nos. 2 and 3 have died respectively on 21/9/1992 and 19/9/1991 and, therefore, complaint proceedings against them would stand abated.

7. Under the aforesaid circumstances, it has not remained in dispute that it is the only accused no. 6

Chandrabhas Shantilal Parikh, who would have to answer the charge in the Criminal Case in question before the learned Chief Judicial Magistrate. It is obvious that it will be open for him to take all possible defences including the defence with regard to the appointment of complainant as a Food Inspector. Under the aforesaid circumstances, the only order that can be passed is to quash the proceedings of Criminal Case No. (Food Case No.) 30 of 1984 in so far as accused nos. 4, 5, 7, 8, 9 and 10 are concerned. The proceedings in so far as accused nos. 2 and 3 are concerned will stand abated.

8. In the facts of the case, therefore, following order will meet the ends of justice :-

The proceedings of Criminal Case No. 30 of 1984 pending in the Court of the learned Chief Judicial Magistrate, Nadiad shall stand abated in so far as accused nos. 2 and 3 - Shantilal Maneklal Parikh and Babulal Maneklal Parikh are concerned. It shall stand quashed in so far as accused nos. 4, 5, 7, 8, 9 and 10 are concerned. It shall proceed further in so far as accused nos. 1 and 6, namely M/s. Chandrakant Company and Mr. Chandrabhas Shantilal Parikh are concerned. It will be open to these accused to take all defences including defence with regard to legality of the appointment of the complainant as a Food Inspector and its effect on the proceedings.

Rule made partly absolute in the aforesaid terms with a direction that the learned Chief Judicial Magistrate will proceed with the matter as expeditiously as possible and decide the same accordingly.

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PVR scr.a56786j.